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2
3
4
5
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL AUSTIN DUNN, also known
as Whiskey Tango10, also known
as Osama bin Drinkin, also
known as SirAustinOfDunn,

Defendant.

Case No. 4:20-cr-00142-SDJ-
KPJ-1

Sherman, Texas

June 30, 2020

8:34 a.m.

TRANSCRIPT OF DETENTION HEARING (CONTINUED)
BEFORE THE HONORABLE CHRISTINE A. NOWAK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

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Plano, TX 75074

For the Defendant:

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Dallas, TX 75219

Also Appearing:

Ms. Judy Dunn (Mother)
Mr. Rick Dunn (Father)

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(518) 302-6772Proceedings recorded by electronic sound recording;
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<u>INDEX</u>				
			<u>Page</u>	
Court's Ruling			72	
<u>WITNESSES FOR PLAINTIFF</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jeffrey Cotner	4	36	44	
<u>WITNESSES FOR DEFENDANT</u>				
Bailey Decker	46	49	63	
<u>EXHIBITS</u>			<u>OFFERED</u>	<u>RECD</u>
Plaintiff's/Government's B			7	7
Plaintiff's/Government's C			9	9
Defendant's 1			10	10

1 (Call to order at 8:34 a.m.)

2 THE COURT: At this time, the Court will call cause
3 number 420CR142, the United States of America v. Daniel Austin
4 Dunn. The Court convened for a detention hearing in this
5 matter previously on June the 18th.

6 The Court took the matter under advisement at the
7 conclusion of the hearing. And subsequent thereto, the
8 Government asked for an opportunity to submit additional
9 evidence for the Court to consider prior to making its
10 determination.

11 The Court has advised both the Government and Defense
12 that it will consider any additional evidence that either of
13 the parties care to offer. And we are convened here for the
14 purpose of that today.

15 We will begin with the Government. Mr. Eason, if you
16 have additional witnesses or evidence to proffer to the Court,
17 you may do so at this time.

18 MR. EASON: Yes, Your Honor. The Government calls
19 Special Agent Jeff Cotner back to the stand.

20 THE COURT: Thank you.

21 Agent Cotner, if you'll please come forward to be
22 sworn.

23 JEFFREY COTNER

24 called as a witness for the Plaintiff/Government, having been
25 duly sworn testified as follows:

1 THE COURT: Agent Cotner, I know you did this at the
2 last hearing, but just for purposes of today's record as well,
3 if you could go ahead and please state your full name, as well
4 as spell it?

5 THE WITNESS: Sure. Jeffrey Brian Cotner,
6 J-E-F-F-R-E-Y B-R-I-A-N C-O-T-N-E-R.

7 THE COURT: Thank you.

8 Mr. Eason, you may proceed.

9 MR. EASON: Yes, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. EASON:

12 Q Special Agent Cotner, do you have Government's
13 Exhibits A, B, and C there with you?

14 A Yes, sir.

15 Q Have you had a chance to review Government's Exhibits
16 A, B, and C prior to coming to Court today?

17 A Yes.

18 Q And those are the same exhibits referenced in the
19 Government's motion to re-open detention hearing?

20 A Yes.

21 MR. EASON: Your Honor, move to admit Government's
22 Exhibit A, B, and C and request permission to approach the
23 bench to pass you a copy as well?

24 THE COURT: Has Ms. Adams had an opportunity to
25 review each of those exhibits?

1 MR. EASON: Your Honor, these exhibits were emailed
2 to Ms. Adams last week and I also provided her a hard copy this
3 morning.

4 MS. ADAMS: No.

5 THE COURT: Okay.

6 MS. ADAMS: Okay, no, these documents were not
7 emailed to me last week. I in fact -- he provided this to me
8 this morning. Last week, what I was provided with was one copy
9 of the 302 that he's trying to admit, which is listed as
10 Exhibit B.

11 And I believe I received the military records from
12 Mr. Dunn. Other than that, I did not receive anything else.
13 So I --

14 THE COURT: Okay, Ms. Adams, do you require
15 additional opportunity to review any of the records to
16 determine anything that you'd like to make -- any statements
17 you'd like to make to the Court regarding those?

18 MS. ADAMS: Well, Your Honor, I -- my position is
19 that, one, I do need additional time. I just received it. And
20 also, this information was in their possession prior to the
21 detention hearing, so this is not new information.

22 THE COURT: We've already discussed that particular
23 issue and the Court, because I've taken the matter under
24 advisement, haven't made a decision. I'm going to hear
25 additional evidence from both sides, both the Government and

1 Defense.

2 And so, for that reason, I'll hear any witnesses or
3 evidence that you have to proffer to the Court as well. I feel
4 that it's in all of our best interests for the Court to
5 consider all information in making a decision.

6 So I'm going to receive additional evidence. The
7 question is whether or not you want some additional time to
8 review those records before we make a determination about A, B,
9 and C.

10 MS. ADAMS: Yes, Your Honor.

11 THE COURT: All right, please be seated and you may
12 have that opportunity.

13 MR. EASON: Permission to approach the Court while
14 she's reviewing that, to hand the Court Government's Exhibits
15 A, B, and C?

16 THE COURT: Let's wait until she has an opportunity
17 --

18 MR. EASON: Okay.

19 THE COURT: -- to see those and then you may.

20 (Pause)

21 MS. ADAMS: And Your Honor, for the record, I have no
22 objection to Exhibit B, because that was emailed me.

23 THE COURT: Okay. Then in light of that, Mr. Eason,
24 if you have a copy of Exhibit B and you want to bring that
25 forward?

1 And I will just remind everybody that in light of the
2 fact that detention hearings are informal proceedings, the
3 evidence that's presented is not governed by the Federal Rules
4 of Evidence, but I will consider any objections that don't
5 relate to the Federal Rules of Evidence.

6 Thank you.

7 All right, and there being no objection to Exhibit B,
8 Government's Exhibit Number B shall be admitted.

9 (Plaintiff's/Government's Exhibit B admitted into
10 evidence)

11 (ringing)

12 OPERATOR: Welcome to AT&T Teleconference Service.
13 Please your access code, followed by the # sign. To join the
14 conference as the host, press *, otherwise press #.

15 Please enter your host password followed by the #
16 sign. Please enter the security code followed by the #. There
17 are one participants on the call, including you. You're
18 joining your conference as the host. For a menu of available
19 commands, press *, #.

20 THE COURT: We have a Pre-trial Services Officer,
21 who's joining us on the phone, the one who prepared the report
22 related to the detention hearing.

23 MS. ADAMS: Okay, I was just confused, like what's
24 going on. So no objection to A.

25 THE COURT: Uh-huh.

1 MS. ADAMS: C, I -- this looks like --

2 (Beep)

3 THE COURT: That's -- it's just her beeping on to the
4 line. That's all it is is Pre-trial Services.

5 MS. ADAMS: This looks like a excerpt from records
6 that I did receive. I'm not certain if these are,
7 (indiscernible) 114 pages. It's obviously not.

8 THE COURT: Do you want to supplement and provide the
9 full 114 pages?

10 MS. ADAMS: I can print it now, but I don't know
11 (indiscernible).

12 THE COURT: I will give you the time that you need to
13 look at it. I don't want you to feel like you haven't had an
14 opportunity to review. I'm not rushing you.

15 MS. ADAMS: No, I understand. I just wanted to make
16 it clear I believe it is an excerpt from the military records.

17 THE COURT: And so, I just want confirm, do you want
18 to submit the full records or are you comfortable with the
19 excerpt that Mr. Eason is attempting to submit?

20 MS. ADAMS: I have a copy of the full record. I have
21 three. I'll send you copy.

22 THE COURT: Okay. So there being no objection to
23 Exhibit C, Exhibit C, Government's Exhibit C shall be admitted.

24 At least as to the discuss Government's A, Ms. Adams
25 has advised that she believes that record is incomplete and

1 does not contain Mr. Dunn's full military history. And as a
2 result, she's requested to proffer the full record.

3 Mr. Eason, is there any objection to Ms. Adams
4 proffering the full military record?

5 (Plaintiff's/Government's Exhibit C admitted into
6 evidence)

7 MR. EASON: There's no objection to the full record.
8 We would like to see what exactly she has. There are things in
9 there such as dental records, which we didn't think was
10 relevant for the Court's consideration that we did withdraw to
11 save the Court some time. We have no objection if she wants to
12 introduce those.

13 THE COURT: Okay.

14 MS. ADAMS: And as far as Exhibit A, I'm -- you can
15 (indiscernible).

16 THE COURT: So do me a favor. Hand Mr. Eason the
17 full record that you'd like to submit, so he has a chance to at
18 least take an opportunity to review that.

19 And then, assuming he sees no problems with it, what
20 we'll do is we'll admit together Government's Exhibit A, as
21 well as Defense Exhibit 1, and we'll put those together.

22 MR. EASON: Your Honor, permission for the witness to
23 step down for one second to look at this with me?

24 THE COURT: You may.

25 MR. EASON: Okay.

1 (Pause)

2 MR. EASON: Your Honor, we have no objection if the
3 Defense wants to introduce this. We would note for the record,
4 though, Mr. Jackson (phonetic) did email the Defendant this. I
5 emailed the Defendant this.

6 This is exactly our document in the exact order,
7 including the duplicates are provided to the Defense counsel
8 prior to this hearing today. We have no objection if she wants
9 to enter this whole one.

10 THE COURT: Go ahead and press forward then. If you
11 can proffer to the Court, Mr. Eason, a copy of Government's A
12 and C. And we will take the full military history and have it
13 marked as Defendant's Exhibit Number 1.

14 (Defendant's Exhibit 1 admitted into evidence)

15 MR. EASON: Wish to approach, Your Honor?

16 THE COURT: Yes, thank you, Mr. Eason.

17 Thank you, Ms. Adams, you can come forward as well.

18 Can you mark hers for her because it doesn't have a
19 sticker yet? Uh-huh, that's Defendant's 1.

20 THE COURT: All right, Mr. Eason, you may proceed.

21 MR. EASON: Thank you, Your Honor.

22 BY MR. EASON:

23 Q Now Special Agent Cotner, you had a chance to review
24 these exhibits prior to coming to Court today; is that correct?

25 A Yes.

1 Q Okay, Exhibit A, the police reports, where did you
2 obtain those?

3 A They were obtained from the Lubbock Police
4 Department.

5 Q Okay, and Exhibit B is a 302 of an interview with
6 Bailey Decker; is that correct?

7 A Yes.

8 Q That's produced by your office?

9 A Yes.

10 Q Okay, and then Exhibit C, where did you obtain
11 Exhibit C?

12 A I obtained these records from the military operation
13 support team. That is attached to our National Joint Terrorism
14 Task Force.

15 Q Okay, and now with respect to Exhibit C, let me take
16 you back to your testimony you provided to the Court last week.

17 In there, you had stated that you obtained his military
18 records, you reviewed them. In 2010, he signed a eight-year
19 commitment with the U.S. Marine Corps Reserve, is that true?

20 A Yes.

21 Q Okay, and then you testified that in December of 2012
22 after he was arrested by the Lubbock Police Department, that's
23 Mr. Dunn; is that correct?

24 A Yes.

25 Q You wrote or you said his chain of command

1 recommended that he be discharged and that he receive other
2 than honorable discharge; is that true?

3 A Yes.

4 Q Based on the records, that's true, is that right?

5 A Yes.

6 Q Okay, then you went on to say, however, he ultimately
7 did receive an honorable discharge. Is that true as you sit
8 here today?

9 A That is what I said, but the other -- he received an
10 honorable discharge for his active duty time, which was only
11 his training for like basic training and aircraft technician
12 training.

13 But the other than honorable was related to his reserve
14 status, not his active duty status. And the documents here
15 support that if you look at the dates.

16 Q Okay, so did he ultimately receive an honorable
17 discharge for his overall service in the United States Marine
18 Corps?

19 A No.

20 Q What characterization did he receive, if you know
21 that?

22 A My understanding from talking to a NCIS special
23 agent, who reviewed these records, is that he received a other
24 than honorable discharge for his Reserve service.

25 Q Okay. Now that's his service with the Marine Corps;

1 is that correct, sir?

2 A Yes.

3 Q Okay, so if we can -- you have a copy of the exhibits
4 up there with you; is that right?

5 A Yes.

6 MR. EASON: Okay, and I don't have the projector,
7 Judge, but I would like to point out a couple sheets of paper
8 here for the Court's benefit?

9 THE COURT: Certainly.

10 BY MR. EASON:

11 Q On the first substantive page of Exhibit C is a DD
12 Form 214; is that correct, sir?

13 A Yes.

14 Q Okay, and in block 7 alpha, it says place of entry
15 into active duty, it says Dallas MEPS, M-E-P-S. That's
16 Military Entrance Processing Station; is that correct?

17 A Yes.

18 Q And if you look down here in block 11, it says that
19 his job, his primary specialty, is to be an aircraft ordinance
20 technician, but he has zero years, zero months, and zero days
21 for this period of service; is that correct?

22 A Yes.

23 Q Okay, and then if you'll -- on block 12, it says the
24 date he entered active duty of this period was July 12th, 2010.
25 Do you see that, sir?

1 A Yes.

2 Q Okay, and then he was on active duty until 2011,
3 March 17th; is that correct?

4 A Yes.

5 Q So approximately, what is that, six months, seven
6 months, eight months, somewhere in there?

7 A Yeah.

8 Q Less than a year; is that right?

9 A Correct.

10 Q Okay, so your understanding he was doing school, his
11 basic training and his primary specialty school training during
12 this time?

13 A Yes.

14 Q If you look at block 18, it then directs him what
15 he's going to be doing as a member of the Marine Corps Reserve;
16 is that correct?

17 A Yes.

18 Q Then here at the bottom of block 23, type of
19 separation is release from inactive duty training IEDT; is that
20 correct?

21 A Yes.

22 Q And it says completion of required active service
23 paragraph 28 and it says honorable in paragraph 24; is that
24 correct?

25 A Correct.

1 Q Okay, we're going to come back to some of these in
2 just a second here. If you go to page 3 now of the exhibits.

3 MR. EASON: Judge, I apologize, these are not marked
4 at the bottom.

5 THE COURT: Are you referencing the one that is dated
6 December 4th of 2012?

7 MR. EASON: Yes, ma'am.

8 THE COURT: Okay.

9 BY MR. EASON:

10 Q It's from the Commanding General 4th Marine Logistics
11 Group and it's to the Commandant of the Marine Corps. Do you
12 see that there, Special Agent Cotner?

13 A Yes.

14 Q It says recommendation for administrative discharge
15 of Lance Corporal Daniel A. Dunn, United States Marine Corps
16 Reserve. And then down in paragraph 2(a), it says
17 characterization of service, other than honorable. Do you see
18 that?

19 A Yes.

20 Q Okay, and the separation code is HKQ1 in block C,
21 paragraph (c), rather for misconduct. Do you see that?

22 A Yes.

23 Q Okay, so HKQ1, we'll come back to that in just a
24 second. If you go to the next page, please, Special Agent
25 Cotner?

1 And these documents that are follow are the packet related
2 to that administrative discharge for an under other than
3 honorable conditions discharge; is that correct?

4 A Yes.

5 Q Okay. The next page is from the Staff Judge
6 Advocate. That's the lawyer for the 4th Marine Logistics
7 Group; is that correct?

8 A Correct.

9 Q Okay, and it's to the commanding general and it's a
10 recommendation for administrative discharge of Lance Corporal
11 Dunn.

12 And again in block 2 in paragraph 2, recommended basis for
13 discharge, misconduct or commission of a serious offense. And
14 the recommended characterization discharge in paragraph 3 is
15 other than honorable; is that correct, sir?

16 A Yes.

17 Q Okay, now here in block 5, it says SNM has not been
18 mobilized or deployed and is exempt from the required medical
19 screening for PTSD or TBI; is that correct, sir?

20 A Correct.

21 Q Okay, was that also consistent with the FBI
22 interviews of Mr. Dunn's father?

23 A Yes.

24 Q Specifically that Mr. Dunn's father told you he had
25 not -- not you, but told an FBI agent he had not been deployed;

1 is that right?

2 A That's correct.

3 Q And then, it says here recommend that Mr. Dunn, Lance
4 Corporal Dunn be separated from the Marine Corps with an other
5 than honorable characterization of service, correct?

6 A Correct.

7 Q Okay. If we go to the next page, this document's
8 dated 2 October 2012. And it's from the commanding officer to
9 the commanding general. Is that correct, sir?

10 A Yes.

11 Q Okay, it says essentially the same things here in
12 paragraph 3 that he has not deployed or participated in a
13 combat operation during his service; is that correct?

14 A Yes.

15 Q Okay, and paragraph 5 says he has no combat service
16 or deployment; is that correct?

17 A Correct.

18 Q If you go to the next page, this is actually the
19 document that was sent to Lance Corporal Dunn, is that correct?

20 A Yes.

21 Q It's from the commanding officer of says Motor
22 Transport Company, 6 Motor Transport Battalion to Lance
23 Corporal Daniel A. Dunn, the United States Marine Corps
24 Reserve.

25 And its subject is notification of separation of

1 proceedings. And if you look there at paragraph 2, it says the
2 least favorable characterization of service which you may
3 receive is other than honorable; is that correct?

4 A Yes.

5 Q And that's what he was recommended for; is that
6 right?

7 A Correct.

8 Q Okay, and then we had that code of HKQ1 earlier. Is
9 that right, sir?

10 A Correct, for misconduct.

11 Q Yes, and then, it goes on the next couple pages to
12 list out his rights that he has as part of the administrative
13 separation process; is that right, sir?

14 A Yes.

15 Q Okay, if we skip forward two pages here or three
16 pages, there's actually a memo from Lance Corporal Daniel A.
17 Dunn to his commanding officer signed by Quarterly Lance
18 Corporal Dunn on 16 October at 10:30 time in the morning; is
19 that right?

20 A Yes.

21 Q And there's further documents in here with Lance
22 Corporal Dunn's initials on there understanding his rights; is
23 that correct sir, acknowledging his rights?

24 A Correct.

25 MR. EASON: Okay, let's go to the back. At the very

1 back of the exhibit, there's eight pages, Your Honor. We're
2 going to page 1 of those eight pages.

3 And at the top of that page, it says individual
4 separation information, page 1 of 7. And I apologize for not
5 having these marked at the bottom.

6 THE COURT: I'm there.

7 BY MR. EASON:

8 Q Okay, so Special Agent Cotner, at the very top of the
9 left-hand corner, it says pay entry date 2010, July 12th; is
10 that right?

11 A Yes.

12 Q So when we flip back to the first page and we look at
13 the date entered, active duty this period for a school, it's
14 2010, 7/12, July 12th; is that right?

15 A Yes.

16 Q Okay, so that matches up, right?

17 A Correct.

18 Q So this document we're looking at, the back, this is
19 individual separation information for Mr. Dunn's whole military
20 service; is that right?

21 A That's right.

22 Q Okay. Now it says original entry date, do you know
23 that's when he took the oath. Do you know whether that's true
24 or not?

25 A I don't know if that's the day he took --

1 Q That's fine. You don't need to worry about that.

2 A Yeah.

3 Q Look at the discharge date, December 12th or December
4 5th, 2012. Do you see that?

5 A Yes.

6 Q Okay, that matches up with the documents from the
7 commanding general; is that correct?

8 A Correct.

9 Q And then, the separation code HKQ1, that's for
10 misconduct or commission of a serious offense; is that right?

11 A Yes.

12 Q Okay, that's the same code that's referenced in the
13 discharge paperwork for an under other than honorable
14 conditions discharge; is that right?

15 A Correct.

16 Q All right, here at the bottom right, it says combat
17 service code, last combat tour heroism, and there's -- it's
18 blank. There's nothing there, is that right?

19 A Correct. And if we skip forward three pages here, on
20 the bottom, there's some codes and schools and specialties and
21 ST and dates. Do you see that, sir?

22 A Yes.

23 Q Okay, and it just lists some schools. In fact, some
24 basic schools: Marine combat training, recruit training, and
25 aircraft ordinance technician. That was to be his primary job;

1 is that right?

2 A Yes.

3 Q That's all he has? He has nothing else; is that
4 correct, sir?

5 A Correct.

6 Q Okay, so the characterization for his service to the
7 United States Marine Corps for a total of approximately two
8 years is under other than honorable conditions of discharge
9 characterization; is that right?

10 A Based on his paperwork and based on my conversation
11 with the NCIS special agent, that is correct.

12 Q Okay, and in your testimony last week, you actually
13 testified that you talked to someone, a female in the National
14 Joint Terrorism Task Force, but she was actually from the Army;
15 is that right?

16 A I'm not sure about her, but the first individual I
17 talked to was from Army CID.

18 Q Okay, this -- but the person you talked to now that
19 clued you in on this paperwork here was from the Navy; is that
20 right?

21 A That's correct.

22 Q Okay. Let's go ahead and shift gears and let's talk
23 his Exhibit A, a copy of Exhibit A there.

24 A Yeah.

25 Q Do you have it in front of you, sir?

1 A Yes.

2 Q Okay, there's essentially two reports in here, one
3 for September 1st, 2012, one for September 23rd, 2012, and then
4 some other loose paperwork as well; is that right?

5 A Correct.

6 Q Okay, if you could please just briefly summarize for
7 the Court what this Exhibit A is discussing on September 1st
8 and what it's discussing September 23rd?

9 A The September 1st report discusses first arrest by
10 the Lubbock Police Department, where he was arrested for public
11 intoxication and discharging of a firearm in a municipality.

12 Q And the second police report?

13 A During this time, he -- I don't know how much detail
14 you want me to go into, but he discharged his weapon. The
15 officers on scene felt that he had staged the scene to try to
16 win back his girlfriend and that the series of events do not
17 match up with what Mr. Dunn presented to the officers.

18 Q Okay, the officers in this report talk about how they
19 believe Mr. Dunn was lying to them; is that right?

20 A That's correct.

21 Q Okay. So if you go to, let's see here, page 4 of
22 this exhibit?

23 A Okay.

24 Q At the top of the page, it says Lubbock Police
25 Department, 12 Tac 30853. And it has a phone type cell, then a

1 phone number, and a date September 1st, 2012. And then,
2 halfway down the page, it starts with narrative. Do you see
3 that, sir?

4 A Yes.

5 Q Okay, and then, in the first full paragraph, it says
6 upon arrival, Officer Anderson was on the scene and had secured
7 A-1's Black Taurus pistol. That's similar to the gun that you
8 retrieved from his residence pursuant to his search warrant; is
9 that right?

10 A Yes.

11 Q And if you go to the next page, and it just
12 described, if you look at the third full paragraph down, it
13 just describes his demeanor with respect to law enforcement.
14 He's -- Mr. Dunn's demanding certain things. He's not
15 cooperating. Is that correct?

16 A Correct.

17 Q Okay, and if you go to the third full paragraph from
18 the bottom of the page, this is where he presents a story to
19 law enforcement about somebody coming to his house with a
20 weapon, knocking on the door, and firing in the door at him,
21 and him running and getting his weapon to fire back; is that
22 correct?

23 A That's correct.

24 Q If we could skip forward one, two, three -- five
25 pages forward?

1 A Okay.

2 Q Or four pages forward, rather. And it's the
3 beginning of a new report. And the report date is September
4 1st, 2012. The reporting officer here is Hester (phonetic),
5 comma, Grady (phonetic) and then in parentheses, Ross
6 (phonetic). Do you see that there, sir?

7 A Yes.

8 Q Okay. This is a -- roughly a two-page report here;
9 is that right?

10 A Yes.

11 Q Also, dated September 1st, 2012. And if you go to
12 the second page of the report, and for the Court's
13 consideration, if you start looking at the first full paragraph
14 or second full paragraph, I did see a bullet hole in the foyer
15 wall?

16 A Correct.

17 Q And then, you go down the next three paragraphs and
18 read these, this is where the officer's talking about Mr. Dunn,
19 in his opinion, staging a scene; is that correct?

20 A Yes, the officer stated that it appeared the shot
21 came from inside of Mr. Dunn's residence and not from the
22 outside the way that Mr. Dunn described.

23 He also says that the front wooden door and the outside
24 glass door would not open wide enough for the bullet to pass
25 unimpeded.

1 So he believed that if the shot was fired from the
2 outside, it would have had to pass through one of those doors.
3 And there was no bullet hole in those doors.

4 Q Okay, and if we go to -- please go forward one more
5 page here, actually two more pages here, it's at the very top
6 of the page, it's report date September 13th, 2012. And the
7 member here is Steen (phonetic), comma, Jeremy Michael
8 (phonetic) there at the top; is that right?

9 A Yes.

10 Q Okay, I look at the bottom of this page, it's
11 September 3rd, 2012. So just two days later. The officer had
12 received multiple voicemails in his phone from Rick Dunn,
13 Daniel Dunn, and Barry (phonetic) -- or Rick Dunn, period, is
14 that right?

15 A Correct.

16 Q And who was that?

17 A That is Mr. Dunn's father.

18 Q Okay, and the next page here in the first full
19 paragraph under the heading September 6, 2012?

20 A Yes.

21 Q What is this detail?

22 A This states that the officer received a phone call
23 from Mr. Dunn, who was upset about his son being arrested. He
24 felt like he was wrongfully arrested.

25 It says that Rick Dunn threatened internal investigations,

1 as well as military investigations, and Congressional hearings.
2 And the officer felt like Rick Dunn was using his employment
3 with a federal agency to intimidate him.

4 Q Now if we skip forward now multiple pages, go to the
5 page that's December 23rd, 2012. It's about ten full pages
6 forward. At the bottom of the page, it says page 1 of 6.

7 A You said 10 to 12 pages forward?

8 Q Yes, it's titled Lubbock Police Department and it has
9 the spreadsheet on the front. At the bottom of it, it says
10 page 1 of 6. And the top right, it says 9/23/2012.

11 A Tell me again what that starts with?

12 Q It says report date 9/23/2012, report incident type
13 weapons, the member or department ID number is Freeman
14 (phonetic), comma, Adam Garrett (phonetic).

15 And then, there's a table on the front page here, Special
16 Agent Cotner, under administrative information. At the bottom
17 right, it says page 1 of 6.

18 A Yes, I'm with you.

19 Q Okay, and this is the beginning of the report for
20 September 23rd, 2012 for Mr. Dunn's unlawful actions then; is
21 that right?

22 A Yes.

23 Q Okay. And if you go to the next page here, the
24 summary narrative, it says A-1, that's referencing the
25 Defendant; is that right?

1 A Yes.

2 Q It says damage to V-1, that's victim 1's, property in
3 retaliation for a previous case. A-1 placed V-2 and V-3 in
4 fear for their lives and property on more than one occasion.
5 A-1, that's the Defendant, right?

6 A Yes.

7 Q Was in possession of an illegal knife. And A (sic)
8 was intoxicated in a public place and a danger to themselves
9 and others. It's all true and correct, sir?

10 A Correct.

11 Q And if we skip forward three pages here, and this is
12 at the top of this page, it says Lubbock Police Department, 12
13 Tac, and when I says Tac, I mean dash, 33878.

14 Underneath that, it says vehicle. And then, there's a
15 modus operandi, then narrative. Do you see that sir? At the
16 bottom of it, it says page 5 of 6.

17 A Yes.

18 Q So if you look at the third paragraph here, Officer
19 Stamps (phonetic) advised he located A-1. That's the
20 Defendant, right?

21 A Officer Stamps advised he located A-1 walking. Is
22 that where you are?

23 Q That's right. Walking away from the front door of
24 Victim 1's residence, Officer Stamps advised A-1 had a knife on
25 his person, which Officer Stamps secured until his -- till my

1 arrival. It says see Officer Stamp's related supplemental
2 report.

3 And then, it goes on to talk about this reporting
4 officer's observations; is that correct?

5 A Correct.

6 Q Okay, and if you look at the middle of the next
7 paragraph, it says that the reported problem have -- possibly
8 having a firearm on him.

9 In my previous dealing with A-1, the Defendant, having
10 numerous firearms, myself and other officers on the scene
11 checked the Defendant's vehicle for any firearms.

12 We located a camouflaged .270 caliber rifle with three
13 rounds in the magazine and one in the chamber. That means that
14 there's one ready to go, ready to be fired; is that right?

15 A Yes.

16 Q And a gun mount in the back window of A-1's vehicle.
17 We also located a black .9 millimeter semi-automatic carbine
18 with 15 rounds and an extended magazine in one round and the
19 chamber again ready to go; is that right?

20 A Correct.

21 Q All right, he unloaded the rifle, secured them and
22 ammunition in the back seat of Officer Jones patrol vehicle; is
23 that correct?

24 A Correct.

25 Q And then, he got the knife and it had partial

1 serrated edges on both knives sharpened; is that correct?

2 A Yes, that's when he was arrested for unlawful
3 carrying of a weapon.

4 Q And that was a knife; is that right, sir?

5 A Correct.

6 Q And if you go to the next page, one, two, three
7 paragraphs down, those were the officer's observations of the
8 tires that had appeared to have been slashed by the knife, is
9 that correct?

10 A Correct.

11 Q Later determined there were five puncture marks in
12 the tire; is that right? That's near the bottom of that third
13 paragraph, sir.

14 A Correct.

15 Q Okay, and then at the bottom and next paragraph, last
16 sentence, I determined the Defendant was intoxicated, was
17 located in a public place, and was a danger to himself and
18 others; is that correct?

19 A Correct.

20 Q Okay. If you please go to Government's Exhibit B,
21 just going to shift gears and talk about that for a second.
22 This is a two-page document; is that correct?

23 A Correct.

24 Q All right, and what is it of?

25 A This is the FD302 report of interview with Bailey

1 Decker.

2 Q And who's Bailey Decker? Someone the Court heard
3 from last week; is that right?

4 A Yes, that's Mr. Dunn's girlfriend.

5 Q Okay, and if we -- last week, Ms. Decker testified in
6 response to a question from the defense counsel, okay, and did
7 you also tell officers that Mr. Dunn smokes occasionally? And
8 she said I did. And the question was okay and why did you say
9 that?

10 And Ms. Decker said I was nervous and scared. I didn't
11 want anyone to get in trouble, because I don't know if Austin,
12 that's the Defendant, right?

13 A Correct.

14 Q Actually smokes or not because it was mine. That was
15 in reference to marijuana; is that right?

16 A Correct.

17 Q Okay. And then, she also said it was him, too, in
18 her testimony last week as well; is that right?

19 A She believed it was him.

20 Q Okay. That's what she said last week in her
21 testimony --

22 A That's correct.

23 Q -- to this Court? Okay. If you look at this 302,
24 though, and please for the Court, describe the circumstances
25 surrounding this interview done by Ms. Decker?

1 A During this interview, Rick Dunn arrived while Bailey
2 was being interviewed outside. And Rick Dunn said that he
3 didn't know if they should be talking to the agents about --

4 Q Let me stop you right there. Were you at the
5 interview?

6 A No.

7 Q Okay, tell the Court who was at the interview?

8 A Special Agent Christopher Jancosco (phonetic) and
9 Task Force Officer Alan Gehring (phonetic).

10 Q Okay, and they were talking to Ms. Decker; is that
11 right?

12 A Yes, outside the residence.

13 Q Whose residence?

14 A Rick Dunn -- well, actually in front of Austin Dunn's
15 residence, which is in close proximity to Rick Dunn's.

16 Q All right, was she under arrest, was she handcuffed,
17 anything like that?

18 A No.

19 Q Okay, so while they're talking to her, the -- Mr.
20 Dunn, the Defendant's father, comes out to the interview; is
21 that right?

22 A Correct.

23 Q Okay, tell the Court what happened then?

24 A He said words to the effect of I don't know if we
25 should be talking to you without an attorney present. Chris

1 Jancosco said we will absolutely get in our cars right now and
2 leave if that's what you wish.

3 And he responded that, well, if Bailey is comfortable
4 talking with you, then that's fine. And he said that he had
5 some things or thoughts that he would like to share with the
6 agents as well, but that he had to go to a meeting.

7 And so, Mr. Dunn left. Bailey said she was comfortable
8 continuing the interview and she did continue the interview.

9 Q Okay, she didn't say she was nervous or scared?

10 A No.

11 Q Okay, if you look in this 30 -- so the 302 is what,
12 it's a summary of the interview; is that right?

13 A Correct.

14 Q All right, anywhere in here does it say that she was
15 nervous or scared or told the agency she was nervous or scared
16 or appeared to be nervous or scared?

17 A No.

18 Q If you look down in the fourth full paragraph here,
19 it says Decker knew Dunn had served in the U.S. Marine Corps
20 and was last stationed at U.S. Marine Corps Reserve Unit in
21 Lubbock, Texas. That was true; is that right?

22 A Yes.

23 Q Based on the military records?

24 A Correct.

25 Q Okay. And then next, it says Decker stated Dunn had

1 told her he had deployed to both Afghanistan and Iraq. And
2 during one of those deployments, he was injured by an
3 improvised explosive device, which he had lost some of his
4 hearing. That is not true according to the military records;
5 is that right?

6 A That's right.

7 Q Also, Mr. Dunn's father confirmed that, too; is that
8 right?

9 A He did.

10 Q She said that he was -- that Mr. Dunn was in a car
11 accident about a year ago and suffered some injuries. As far
12 as the time frame goes, do you know when he was in a car
13 accident?

14 A No.

15 Q You've heard from other witnesses he was in a bad car
16 accident, he smokes marijuana to deal with the car accident
17 injury; is that right?

18 A That's correct.

19 Q And it says Decker stated Dunn advised the U.S.
20 Marine Corps Reserve Unit in Lubbock was deploying to
21 Afghanistan and Dunn didn't have enough time on his contract.
22 Well, he had six years left, didn't he?

23 A Yes.

24 Q Okay, to deploy and he stayed behind until he was
25 discharged; is that right, sir?

1 A Yes.

2 Q All right, and then, the next paragraph says Decker
3 admitted the marijuana and bong on the table Tuesday morning.
4 Tuesday morning was the day you served the search warrant; is
5 that correct, sir?

6 A Correct.

7 Q But they belonged to her; is that correct?

8 A Yes.

9 Q All right, nowhere in here does she say that it was
10 hemp; is that right?

11 A That's right.

12 Q Okay. If she had told the agents, well, that was
13 actually hemp and that's legal, the agents would have wrote
14 that down; is that true?

15 A That's true.

16 Q Decker stated she suffers from depression and she
17 uses marijuana to help her; is that right?

18 A Yes.

19 Q Even though she didn't have a prescription for it, if
20 you go to the second page here, when asked if she ever
21 witnessed Dunn take any illegal drugs, not just marijuana, just
22 illegal drugs, is that what it says?

23 A Yes.

24 Q During the month they had been living together,
25 Decker advised Dunn would have -- would smoke some of her

1 marijuana, but she didn't see him use any other drugs or
2 medication. Do you see that, sir?

3 A Yes.

4 Q Okay, so this report is actually done contemporaneous
5 with the actual interview of Ms. Decker; is that right?

6 A Yes.

7 Q Close in time, right?

8 A Right.

9 Q That's to make sure it's as accurate as possible?

10 A Yeah, it says it was -- investigation was on June
11 12th and it was drafted on June 12th.

12 Q Same day?

13 A Same day.

14 MR. EASON: If I may have one second, please, Your
15 Honor?

16 THE COURT: You may.

17 MR. EASON: I have nothing further for this witness,
18 Your Honor.

19 THE COURT: The Court has a question that it wants to
20 ask about the records prior to Ms. Adams.

21 And then, Ms. Adams, you can certainly ask any
22 questions.

23 Agent Cotner, I want to make sure in connection with
24 Government's Exhibit A, it appears that the totality of the
25 records related to the Lubbock Police Department and the

1 criminal history are dated for the year 2012 with the exception
2 of one record.

3 And one record listed as report officer 163204,
4 Sanchez, Lauren Casey (phonetic) has a report date of 5/6/2020.

5 THE WITNESS: Yeah.

6 THE COURT: Okay, and I just want to make sure, is
7 that date correct?

8 THE WITNESS: Yes, that's when he collected his
9 Taurus pistol back from the Lubbock Police Department after he
10 got off probation.

11 THE COURT: Okay. All right, thank you.

12 MS. ADAMS: May I proceed, Your Honor?

13 THE COURT: You may, Ms. Adams. Thank you. I just
14 wanted to clarify that that date was correct.

15 CROSS-EXAMINATION

16 BY MS. ADAMS:

17 Q Mr. Cotner, let's first talk about -- let's see,
18 Exhibit C, which would be the military records.

19 A Okay.

20 Q Okay, and in the military records, you reviewed them,
21 correct?

22 A I have.

23 Q And the record stated that he was discharged because
24 he had been charged with four different cases, correct?

25 A I mean, I don't remember it saying four different

1 cases. That sounds about right, though.

2 Q Okay. I believe it specifically says that he was
3 charged with two felonies and two misdemeanors; is that
4 correct?

5 A Yes.

6 Q Okay, and that was the reason for his discharge?

7 A Correct.

8 Q Okay. Now in the end, he was actually charged with
9 two cases, correct?

10 A Well, I mean, he was charged with all of them and
11 then, yeah, they were reduced to two charges. And he served
12 probation for two charges.

13 Q So if the Pre-trial Services Report says that the
14 prosecutor has rejected the charge without a pre-trial
15 diversion, which one do -- would be correct?

16 A I'm sorry, I'm -- can you repeat the question?

17 Q Okay, you're saying that they were reduced or they
18 were combined in some way. Okay, but the Pre-trial Services
19 Report, it says the prosecutor has rejected the charge. That's
20 different, correct?

21 A Yes.

22 Q Okay. And Mr. Dunn wasn't convicted of any of those
23 offenses, correct?

24 A He was convicted -- no, he was not convicted. He
25 served deferred adjudication and probation for two.

1 Q Okay, in regards to Exhibit A, you also mentioned
2 that Mr. Rick Dunn contacted the officer per the reports,
3 correct?

4 A Yes.

5 Q And on that same report, it also states that other
6 people called regarding the case as well, correct?

7 A Yes.

8 Q Okay. In regards to Exhibit B, the report regarding
9 Bailey Decker, now you weren't present, correct?

10 A I was not.

11 Q Okay, now was this interview recorded?

12 A No.

13 Q Was there any type of body or dash camera?

14 A No, we don't have those.

15 Q Okay, so the report is from the agent and it's based
16 on their recollection, correct?

17 A Based on their notes and their recollection.

18 Q But if there were some type of camera, that could
19 just solve all the issues, correct?

20 A If there is an issue, then yeah, it would solve it.

21 Q Okay. Now in his -- in Exhibit A, the police reports
22 from Lubbock, anywhere in those records does it say that he
23 resisted arrest?

24 A It says that he was out of control when they were
25 trying to, I think, take him to the hospital and that the

1 officer had to put a taser up to his side and warn him that he
2 needed to comply or calm down.

3 Q That he needed to -- that the EMTs were there to help
4 him, correct? That's what it says?

5 A I'd have to see it to speak to it specifically. I
6 mean, there's several pages of this Lubbock Police report. I
7 can't recall every word in it.

8 Q Okay. Well, feel free to refresh your memory.

9 A Can you refer me to where you're talking about?

10 Q No, I cannot. I read them. That's where I got it
11 from.

12 MR. EASON: Your Honor, this is --

13 THE COURT: I certainly understand you can't recall
14 all of the records.

15 You can take an opportunity if you'd like to review
16 them or otherwise if you're unable to answer the question, you
17 may say so.

18 THE WITNESS: I'll take a minute, see if I can locate
19 what you're referring to.

20 MS. ADAMS: Uh-huh.

21 MR. EASON: Can we -- and what was the question
22 again, Your Honor? Would that be permissible to have that
23 repeated, please?

24 THE COURT: I'm not able to read it, because we're on
25 a recorder.

1 But Ms. Adams, if you want to restate your question,
2 you can.

3 BY MS. ADAMS:

4 Q I believe the question was that officers never -- he
5 never resisted arrest. I believe the agent said something to
6 the effect of they had to use a taser due to the EMTs. And I
7 said that the officer explained to him that the EMTs were there
8 to help him.

9 A Could I just read what it says? It says EMS arrived
10 on the scene and began checking Dunn for any injuries. They
11 placed him on to a stretcher and put him into the back of an
12 ambulance.

13 While in the ambulance, EMS personnel yelled at me and
14 said they needed assistance with Dunn. Dunn was trying to get
15 up off of the stretcher. I ran to the ambulance and told Dunn
16 to comply with the EMS personnel because they were trying to
17 help him.

18 Q Okay.

19 A He was yelling and trying to get up. He seemed very
20 incoherent. I took my LPD-issued X26 taser and removed the
21 cartridge.

22 I placed the taser against Dunn's side and told him if he
23 did not comply, I would tase him. Dunn immediately became calm
24 and seemed to understand the warning.

25 Q Okay, and prior to that --

1 A Can I continue, please?

2 Q No. Prior to that, it also --

3 THE COURT: Ms. Adams, I'm going to let the witness
4 finish his answer, okay?

5 MS. ADAMS: Uh-huh.

6 THE COURT: So, Agent Cotner, if you have something
7 further to complete your answer, you may do so.

8 THE WITNESS: Yes, it says to this point, Dunn had
9 been very uncooperative.

10 THE COURT: Thank you.

11 Ms. Adams, you may proceed.

12 BY MS. ADAMS:

13 Q And it also said that he was extremely incoherent.
14 He was breathing -- like he told me that he felt light-headed,
15 correct?

16 A Yes.

17 Q Okay. So that would be a no, he didn't attempt to
18 resist arrest, correct?

19 A Correct.

20 Q Okay, and --

21 A Because he wasn't being --

22 Q -- there is -- it's also correct that he didn't
23 attempt to flee, correct?

24 A Correct.

25 Q All right. And in regards to the public intoxication

1 that you mentioned, it says that the officer requested that
2 they dismiss the citation, correct?

3 A Again, I'd have to pull it up to see what you're
4 talking about.

5 Q So it is -- report is 12 at the top 30853, supplement
6 number 5. It's toward the bottom of the page.

7 A Can you repeat the question?

8 Q The public intoxication ticket, it was dismissed at
9 the request of the officer, correct?

10 A I'm just not seeing that, but that's definitely
11 possible.

12 MS. ADAMS: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 MR. EASON: Your Honor, I ask the defense counsel to
15 show them first?

16 THE WITNESS: Yes, that's correct. It says dismissed
17 in the interest of justice.

18 BY MS. ADAMS:

19 Q Now let's go to Exhibit C, the military records.
20 Anywhere in those records did it say that she didn't show up or
21 anything like that, that he went AWOL, went missing?

22 A No.

23 Q Okay, he didn't stop reporting for duty or anything
24 like that?

25 A Not that I know of.

1 Q Okay. Now let's talk about something that we
2 discussed last week maybe on the 18th?

3 A Okay.

4 Q Do you recall talking about Mr. Dunn's Lubbock cases?

5 A Yes.

6 Q Okay, and did you have a opportunity to review --

7 MS. ADAMS: I'm not sure which exhibit it was last
8 week, Your Honor. If I may approach?

9 THE COURT: What are you approaching for?

10 MS. ADAMS: To see which exhibit number this was last
11 week. I don't want to refer to it incorrectly because I
12 believe the Court had the originals.

13 THE COURT: They're with the Clerk's Office now
14 because they'd been filed from the hearing.

15 MS. ADAMS: Oh, okay. I'm sorry.

16 BY MS. ADAMS:

17 Q Now in regards to his Lubbock cases, you talked about
18 his probation violation. Do you recall that?

19 A Yes.

20 Q Okay. Did you have a opportunity to review the
21 motion associated with that?

22 A With the probation violation?

23 Q Yes.

24 A Not that I recall.

25 Q Okay, and you also stated that you talked with his

1 former probation officer?

2 A Yes.

3 Q Did she ever tell you that he failed to report?

4 A Not that I recall.

5 Q Did she ever tell you that he failed to attend a
6 court setting?

7 A I don't recall that.

8 Q Okay.

9 MS. ADAMS: No further questions, Your Honor.

10 THE COURT: Thank you.

11 Mr. Eason, anything further for this witness?

12 MR. EASON: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. EASON:

15 Q In the -- with respect to the motion with respect to
16 probation from all the stuff we had talked about, Special Agent
17 Cotner, the -- it was detailed out that Mr. Dunn did fail to
18 submit urine specimens approximately 30-plus times; isn't that
19 true?

20 A The Probation Officer, I believe she said
21 approximately 23 times, but if there's a report that says --

22 Q Well, let's clarify that. Approximately 23 times, he
23 tested positive for marijuana or cocaine; is that right?

24 A That's right.

25 Q Okay. But as far as failing to submit a urine

1 specimen, that was approximately 30-plus times; isn't that
2 true?

3 A That sounds accurate.

4 MR. EASON: No more questions.

5 THE COURT: Thank you.

6 Ms. Adams, anything further for this witness?

7 MS. ADAMS: No, Your Honor.

8 THE COURT: All right, Agent Cotner, you may step
9 down.

10 Mr. Eason, just to confirm, this was the sole witness
11 you intended to present today, so there's no further evidence
12 you desire to proffer to the Court at this time; is that
13 correct?

14 MR. EASON: No further evidence, Your Honor. If the
15 Court would indulge me with some comments with respect to some
16 of the evidence at the end of the hearing, if the Court would
17 like to hear them, we can do that.

18 THE COURT: I will hear argument from each of you.

19 All right, Ms. Adams, do you have a further witness
20 to present at this time?

21 MS. ADAMS: Yes, Your Honor, I'd like to call Bailey
22 Decker.

23 THE COURT: All right, Ms. Decker, if you can come
24 forward.

25 BAILEY DECKER

1 called as a witness for the Defendant, having been duly sworn
2 testified as follows:

3 THE COURT: Okay, Ms. Decker, once you're seated, if
4 you can do me a favor and go ahead and state your full name for
5 the record, again, as well as spell it?

6 THE WITNESS: Bailey Rae Decker, B-A-I-L-E-Y R-A-E
7 D-E-C-K-E-R.

8 THE COURT: Thank you. And Ms. Decker, I'm just
9 going to remind you, as I did the last time you were with the
10 Court, particularly in light of the alleged marijuana use, that
11 you do have the right to remain silent.

12 You don't have to say anything at all that would
13 incriminate you in connection with any crime whatsoever. And
14 so, I do just want you to be mindful of that while we're here
15 today, okay?

16 THE WITNESS: Okay, thank you.

17 THE COURT: All right.

18 Thank you, Ms. Adams, you may proceed.

19 MS. ADAMS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. ADAMS:

22 Q Now, Ms. Decker, do you recall when the agents came
23 to your house?

24 A Yes.

25 Q Okay, the agents that interviewed you, did they

1 record the conversation or anything like that?

2 A Not to my knowledge.

3 Q Okay, and you again -- you understand why we're here?

4 A Yes.

5 Q Okay, so to move forward in regards to the questions
6 that the officers or the agents asked you, at that point, were
7 you nervous or afraid?

8 A I was nervous, yes.

9 Q Okay, so -- and you don't have to say you're nervous
10 to be nervous, correct?

11 A Correct.

12 Q All right.

13 A And I also suffer from severe anxiety, too. So
14 that's going on at all times.

15 Q I understand. Thank you for sharing that. The
16 question about Mr. Dunn's military service, how did that come
17 about?

18 A I believe they asked me if he had any back injuries
19 or if he had ever -- if I knew anything about his military
20 service.

21 And with everything going on, the -- my dog was running
22 around. I was trying to make sure he wasn't going to run out
23 into the road.

24 And me being anxious, I got -- he told me a story one time
25 about somebody he knew who was an Afghanistan that stepped on

1 an IED.

2 And with everything going on, everything just kind of got
3 mixed up in my head. And I mixed up the story that he told me
4 about somebody he knew versus him not actually deploying.

5 Q Okay, so in regards to the back injuries or pain, so
6 he does suffer from back injuries?

7 A Yes.

8 Q Okay. Was that from the surgery?

9 A I believe he got into a car accident, which caused
10 most of the back pain.

11 Q Okay, did he have the surgery after that or do you
12 know?

13 A I'm not sure if it was after that.

14 Q Okay. Do you know if he's currently suffering from
15 back pain?

16 A Yes.

17 Q Okay. In regards to the deployment question, did the
18 agents ask like any additional details or anything like that?

19 A They asked if I knew anything that if he did deploy,
20 if I knew anything about his deployment.

21 Q Okay, did -- at that time, were you kind of
22 overwhelmed or what was going on with you?

23 A I was overwhelmed. I was very anxious, also trying
24 to watch my pup -- our puppy, who was running up and down on
25 the porch, running around the yard, trying to make sure he

1 wasn't trying to eat anything.

2 Q Okay, do you still feel the same way as you did on
3 the 18th, meaning that you don't feel that Mr. Dunn is a threat
4 to anyone?

5 A Correct.

6 Q You've never seen him be violent?

7 A No.

8 Q Okay, he was compliant with the officers on that day?

9 A Yes, ma'am.

10 Q He didn't try to run or flee?

11 A No.

12 Q Okay, he didn't try to resist arrest?

13 A No.

14 Q And you're still willing to assist, if the Court
15 requests, to bring him to Court and make sure he attends his
16 court dates?

17 A Yes, ma'am.

18 MS. ADAMS: Okay. No further questions, Your Honor.

19 THE COURT: Thank you.

20 Mr. Eason?

21 MR. EASON: Yes, Your Honor. May I have a second,
22 please?

23 THE COURT: You may.

24 CROSS-EXAMINATION

25 BY MR. EASON:

1 Q And, Ms. Decker, good morning, my name is Chris
2 Eason. I'm the Assistant U.S. Attorney. We've never met
3 before; is that correct?

4 A Correct.

5 Q Okay, now, with respect to Mr. Dunn's military
6 service, you said that you just got it jumbled up in your mind
7 and confused that he was the one who told you Mr. Dunn had the
8 deployed to Afghanistan and Iraq, but really it was one of his
9 friends; is that right?

10 A Somebody he used to know, yes.

11 Q And that's because your dog was running around,
12 that's why you confused that fact?

13 A Well, there was a lot going on previously. When I
14 saw the FBI for the first time, I had guns pointed at my face.
15 I just woke up. It's a little scary to see the agents, who
16 were behind all of that, show up at your house.

17 I have anxiety and I was also trying to focus on my puppy,
18 to make sure he wasn't going to eat anything or run into the
19 road.

20 Q Okay. So you were --

21 A I was anxious and I was a little scared and --

22 Q Okay, I understand that. And just take as much time
23 as you need to answer my questions, okay?

24 A Yeah.

25 Q I'm not trying to trick you here or intimidate you or

1 anything. I just want to just get the truth out as you know
2 it, you know, to the judge, okay?

3 A Okay.

4 Q All right. These -- you said agents pointed guns in
5 your face?

6 A When they showed up at the house, when the S.W.A.T.
7 knocked on the door and we opened the door, there is guns
8 pointed at us.

9 Q You said we opened the door. Did you open the door
10 or did Mr. Dunn open the door?

11 A He opened the door and I was directly behind him.

12 Q Okay, and you could see around him, I take it?

13 A Yes.

14 Q Okay. And then that was -- there were a couple days
15 in between that instance and the time when these agents came
16 out to talk to you; is that right?

17 A Yes.

18 Q Now when these agents came out and talked to you,
19 they didn't have camouflage on, did they?

20 A No, but they were still at the scene when everything
21 happened.

22 Q Okay, when they were at the scene, they didn't have
23 camouflage on at the scene, they were there just to interview
24 people and talk to people; is that right, and collect evidence?

25 A I believe so.

1 Q They didn't have a helmet on. They weren't part of
2 the S.W.A.T. team; is that right?

3 A Correct.

4 Q Okay, they weren't in that S.W.A.T. vehicle that came
5 up in the yard with the loud P.A. system, right?

6 A No.

7 Q Okay, and that startled you, right --

8 A Yes.

9 Q -- when the S.W.A.T. team came on there? Okay. Now
10 when they showed up, these agents didn't point a gun to you?

11 A No.

12 Q They didn't yell at you, did they?

13 A No.

14 Q They didn't scream at you?

15 A No.

16 Q They asked you, you know, if you were comfortable, if
17 you're willing to proceed with the interview, right?

18 A They never asked if I was comfortable.

19 Q Well, they didn't --

20 A They just were talking to me and asking questions.

21 Q Okay, so you were in the courtroom when Special Agent
22 Cotner testified?

23 A Yes.

24 Q All right, so did Mr. Dunn, did the Defendant's
25 father come and approach the agents while they were

1 interviewing you?

2 A Yes.

3 Q Okay, and tell the Court what happened then?

4 A He asked to see their badges. He asked who they
5 were. He asked if we needed any -- if we needed our lawyer
6 there.

7 They said if he wanted them to leave, they would leave.
8 And he said that he's willing to talk to them, but he had an
9 appointment or something or he had to babysit. So he had to
10 leave. And then, he left and they still talked to me.

11 Q All right, and did the father not also say as long as
12 you're comfortable, Ms. Decker, you could talk to him?

13 A That was not said.

14 Q Oh, that wasn't said, okay.

15 A No.

16 Q So you dispute that then?

17 A What was that?

18 Q It's not that it's possible that was said. You're
19 saying, as a matter of fact, 100 percent, that was not said, is
20 that what you're --

21 A That was not said.

22 Q It was never said, okay.

23 A No.

24 Q And is it possible you were distracted because of the
25 dog and the anxiety when that was said, that you didn't hear

1 that?

2 A It's possible, but Rick did not say that if I'm
3 comfortable.

4 Q Okay, now with respect to his military service, that
5 was a story that he told you about his buddy or someone he used
6 to know?

7 A I don't know if it was his buddy, but it was somebody
8 he knew.

9 Q Okay. Now the FBI also wrote down -- well, let me
10 just ask you this. Did you also tell the FBI that, well, the
11 Defendant's reserve unit was going to deploy to Afghanistan,
12 but because he didn't have enough time on his contract to
13 deploy, he stayed behind until he was discharged? Did you tell
14 the FBI that?

15 A I don't remember.

16 Q Okay, you don't remember. So if they --

17 A I don't remember that part, no.

18 Q Okay, are you denying that happened or you're just
19 saying you don't remember?

20 A I'm saying I don't remember.

21 Q Okay, so if the FBI says that you said it, and they
22 took it down in notes, and they put it in a -- in official
23 form, the same day of the interview, would you agree that's
24 true?

25 A It could be.

1 Q Okay, so you've heard the testimony again. I'm not
2 going to walk you back through all the exhibits, okay?

3 A Uh-huh.

4 Q But his military records show that he came in in 2010
5 near the end and he was scheduled to stay with the Marines till
6 2018.

7 But he was discharged in late 2012 for misconduct and
8 commission of serious offense with the least favorable
9 administrative discharge characterization, which is under other
10 than honorable conditions. Did you hear all that testimony?

11 A Yes.

12 Q Okay, that has nothing to do with the fact that his
13 unit's deploying. And he just doesn't have enough time to
14 deploy with them because of his contract. He had six years
15 left on his contract. Do you understand all that?

16 A Yes.

17 Q Would you agree that he lied to you about that?

18 A I wouldn't say he lied. I might be remembering
19 things wrong.

20 Q Okay, so if there's a problem with the evidence as
21 you know it and the actual real evidence, the military records,
22 there are problems with your memory, is that what your
23 testimony is?

24 A It could be.

25 Q Okay, what else could it be?

1 A Maybe it could have been him talking about somebody
2 else he also knew.

3 Q Okay, so you think Mr. Dunn represented to you that
4 Mr. Dunn got out of the military in 2012 because someone else
5 had to deploy to Afghanistan, but they couldn't make their
6 deployment because they had little time left in their contract?
7 Is that what your testimony is?

8 A No.

9 Q Okay, so you understand there's --

10 A I'm sorry, I'm just really nervous.

11 Q You're fine. And let's just take a second and just
12 pause for a second. But you agree there's an inconsistency
13 between what you told the FBI about what the Defendant told you
14 with respect to his military service and what you're saying
15 today?

16 A Yes.

17 Q And you also realize there's an inconsistency between
18 what you told the Court Mr. Dunn had told you about his buddy,
19 and also these records told the Court about Mr. Dunn, and what
20 the FBI wrote down? Do you understand that?

21 A I believe so.

22 Q Do you love Mr. Dunn?

23 A Yeah.

24 Q All right, you moved down here from Washington,
25 right?

1 A Yes.

2 Q Okay, you want to spend the rest of your life with
3 him?

4 A Yeah.

5 Q Okay, so do you have an opinion as to his character
6 of truthfulness?

7 A What was that?

8 Q Do you have an opinion as to his character of
9 truthfulness?

10 A He's very truthful.

11 Q Very truthful?

12 A Yes.

13 Q Okay, despite the fact that he told you that he was
14 going to be -- that he was discharged because he didn't have
15 enough time left on his contract to deploy to Afghanistan when
16 in fact he had six years left on his contract. Do you still
17 think he's a truthful person?

18 A Yes.

19 Q Okay, you said that he still suffers from back pain
20 today; is that right?

21 A Yes.

22 Q Okay, and you're aware that he smokes marijuana to
23 deal with his back pain, are you not?

24 A In the past he did, yes.

25 Q Okay, and how do you know that?

1 A Because of what was brought up today and what was
2 brought up last week with his -- the failed drug test and the
3 testimonies from his mom.

4 Q Okay, his mom said he smokes marijuana occasionally
5 to deal with his back pain; is that correct?

6 A In the past, yes.

7 Q Okay, and specifically, it's because he doesn't want
8 become addicted to opioids is what he told his mom; is that
9 right?

10 A Yes.

11 Q Okay, would you be surprised to learn he also told
12 his previous Probation Officer he smokes marijuana to deal with
13 the back pain, because he doesn't want to become addicted to
14 opiates?

15 A I'm sorry, I couldn't hear you.

16 Q He also told his Probation Officer that, are you
17 aware of that?

18 A I was not aware of that.

19 Q All right, so he's told two people that. And you're
20 telling this Court you haven't seen him smoke marijuana at all
21 in the past month?

22 A No.

23 Q All right, despite telling the FBI earlier that he
24 smokes marijuana occasionally with you?

25 A I want to point out that I never said I had

1 marijuana. They said the bong in what looks like weed on the
2 table, whose is it? And I said the stuff on the table is mine.

3 Q Okay, now they also asked you did he use any illegal
4 drugs is the phrase they used?

5 A And I said no.

6 Q Okay, well, according to the FBI, he said, well, he
7 smokes marijuana occasionally.

8 A But I did not say that he smokes any or he uses any
9 illegal drugs. And I did not say he smokes marijuana.

10 Q Okay, did you tell the FBI that in response to a
11 question about whether he uses illegal drugs, that yes, he
12 smokes marijuana with me occasionally?

13 A They did not -- that was not my answer to the does he
14 use illegal drugs?

15 Q So let me stop you right there. I'm going to ask you
16 a yes or no question. Did you tell the FBI in response to does
17 he use illegal drugs that, yes, he smokes marijuana with me
18 occasionally?

19 A No.

20 Q Never told the FBI that?

21 A No.

22 Q Did you tell the FBI anything similar to that?

23 A They asked if he ever smokes and I said I think
24 occasionally.

25 Q Smokes?

1 A They just said smokes.

2 Q Okay, so they didn't use the phrase illegal drugs?

3 A No. They asked me if I've ever seen him do illegal
4 drugs. I said no. They asked if he ever smokes and I said I
5 think occasionally.

6 Q All right, and that was in the context of them
7 talking about marijuana on your table and a bong?

8 A That was after they asked if he had ever used illegal
9 drugs.

10 Q All right, and that was also in the context of them
11 talking about the bong on the table?

12 A It could have been, but they didn't specify what they
13 were talking about.

14 Q Well, what do you mean, it could have been? How long
15 was the interview?

16 A What?

17 Q How long was the interview?

18 A Maybe 10, 15, 20 minutes. I don't know.

19 Q Okay, so less than 20 minutes, correct?

20 A Possibly.

21 Q Okay, and during that interview, they raised the fact
22 there was marijuana on the table; is that right?

23 A Yes.

24 Q Okay, and according to them, you told them it was
25 marijuana?

1 A I did not say it was marijuana. I answered their
2 question that what was on the table was mine.

3 Q Okay, I understand that's what you're saying, all
4 right, but they -- that was discussed during the interview --

5 A Uh-huh.

6 Q During the 15 minute interview, 15 to 20 minutes,
7 correct?

8 A Yes.

9 Q The bong on the table was also discussed; is that
10 correct?

11 A Yes.

12 Q Okay, and in the context of that, they asked you
13 about whether he did any illegal drugs; is that correct?

14 A Yes, and I said no, because he does not.

15 Q Okay. All right, I just want to make sure here. You
16 understand it's a crime to lie to the FBI, right?

17 A Yes, I do.

18 Q Okay, and so, is your testimony that you lied to the
19 FBI or that you told them something you were confused about?
20 Or that the FBI was totally wrong?

21 A I never lied to the FBI. I didn't lie to the FBI.

22 Q You didn't lie to the FBI?

23 A No.

24 Q Okay, so how do you explain the inconsistency between
25 what the FBI wrote down and the --

1 MR. EASON: Your Honor, permission to approach and
2 hand the witness Exhibit B?

3 THE COURT: You may.

4 MR. EASON: Okay. Is there a clean copy, Your Honor?
5 I want to get my copy --

6 THE COURT: You may, but counsel, can you all
7 approach for just a moment?

8 (Bench conference, off the record)

9 MR. EASON: Your Honor, may I approach the bench?
10 May counsel approach the bench one more time, please?

11 BY MR. EASON:

12 Q Now, ma'am, I want to ask you an open-ended question,
13 just to get your explanation, okay? There are inconsistencies
14 between the FBI 302, that we heard testimony about earlier
15 today, and between what your testimony is. How do explain
16 those inconsistencies?

17 A I believe that some of the things they wrote down are
18 not actually what I said. When it comes to the military
19 records, I did get messed up and I admitted to that.

20 But some of the things that the FBI wrote down, that they
21 said I answered or the way they questioned me is not actually
22 how the -- it happened, or how I answered, or how they
23 questioned me.

24 MR. EASON: Okay, no more questions, Your Honor.

25 THE COURT: Thank you very much, Mr. Eason.

1 Ms. Adams, any further questions for this witness?

2 MS. ADAMS: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. ADAMS:

5 Q Ms. Decker, if Mr. Dunn was discharged from the
6 military with six years left or if -- no matter what the story
7 was, does that change your view of Mr. Dunn?

8 A No.

9 MS. ADAMS: Okay, no further questions.

10 THE COURT: All right, thank you, Ms. Decker. You
11 may step down.

12 Ms. Adams, do you have any further witnesses to
13 present or evidence to proffer to the Court at this time?

14 (Witness excused)

15 MS. ADAMS: No, Your Honor, I do (indiscernible).

16 THE COURT: Okay.

17 MS. ADAMS: Oh, I'm sorry, yes, Your Honor. This was
18 an exhibit from the, not last week, but the week before. I
19 don't know how it was marked, but I want to refer to it in
20 argument. But it looked like this is my last point. If you
21 would like it, I will provide it to you.

22 THE COURT: Well, if we're certain that it was
23 admitted, then you can use it. But if not, you might want to
24 mark it again and provide the Government an opportunity to look
25 at it. And we'll have it admitted, so that it's clear that

1 it's part of the record.

2 MR. EASON: Your Honor, if I may, I have a copy of
3 the Defense exhibits.

4 THE COURT: Okay.

5 MR. EASON: The filed copy with the Defense exhibits
6 numbers on here.

7 THE COURT: Then, Ms. Adams, do you want to look at
8 those just very quickly?

9 (Counsel confer)

10 THE COURT: All right, Ms. Adams, yes, you may
11 approach.

12 MS. ADAMS: This was Exhibit 7.

13 THE COURT: Thank you very much.

14 MS. ADAMS: Thank you.

15 THE COURT: All right, and the Court will note for
16 purposes of the record that it has thoroughly reviewed all of
17 the prior exhibits. I just don't have your originals.

18 All right, Ms. -- this is not a presumption case.
19 We'll hear from the Government first?

20 MR. EASON: Yes, Your Honor, since the Court already
21 had received comments from Ms. Smith last week, I'm not going
22 to belabor those.

23 I would like to point out that, in this case, the
24 Court does have the benefit of seeing what Mr. Dunn -- how he
25 behaves when he actually is under probation or in under some

1 type of supervised condition.

2 And when you look at the exhibits that the Defense
3 provided you last week, you see approximately 33 times that he
4 failed to show up for a urinalysis and 23 times where he
5 actually tested positive for a urinalysis, just violating
6 probation. He's not a suitable candidate. There are too many
7 red flags here.

8 I will note that if you look at the transcript that
9 was produced and remember the testimony from the father, he
10 said that Mr. Dunn has -- the Defendant has lived with him for
11 28 of the last 30 years.

12 Well, he was on probation for about six years. And
13 he tested positive numerous, numerous times. In that
14 testimony, the father said I know he's not a drug user, period.

15 And, look, his dad loves him. We get it. His
16 girlfriend loves him. We get it. They're not suitable third-
17 party custodians, not here in this case.

18 You see the dad's bias towards his son in the police
19 reports. The dad also testified two weeks ago that he's never
20 known him to be violent.

21 Well, clearly, he can be a violent person. The best
22 neutral third-party unbiased objective person here would be the
23 prior Probation Officer, which Special Agent Cotner testified
24 last time about that witness' opinions and observations about
25 the Defendant, specifically that he can be a violent person and

1 that he told her that she was the only one in law enforcement
2 that he didn't want to kill. That is consistent with the
3 offenses that have been charged here.

4 If the Defendant is living with his parents and still
5 testing positive, living with the family on the family's ranch,
6 what the Defense has proposed is not suitable. It's just not
7 appropriate in this situation. It's just not appropriate in
8 any situation as a matter of fact.

9 And there -- one more thing I'd like to point out,
10 Your Honor. Obviously, you have information that Probation has
11 given you after Probation does their interviews.

12 But there are some inconsistencies between what they
13 gave you and between what we presented today with
14 respect -- additional information with respect to the police
15 reports and the actual substance of the facts backing up the
16 charges of using real weapons and firing weapons at people
17 above peoples' heads.

18 But also with respect to the military service, that
19 is obviously the character of the Defendant is something you
20 can consider here.

21 But the report indicates that probation officer
22 received this information from the Defendant. There's nothing
23 in here about an under -- other honorable conditions discharge
24 in here, nothing. It is designed to mislead that he received
25 an honorable discharge.

1 And we had the misimpression at the beginning as you
2 know from our filing from last Thursday, but when you look at
3 the paperwork, you get into the weeds of it, and talk to
4 someone in the Navy, that is not what happened.

5 And the reason the Navy discharged him wasn't because
6 he had two felonies and probation. It's because of his
7 character.

8 And that's why it's appropriately defined as the
9 characterization, whose overall service from 2010 to 2012.
10 When you read those documents is he tainted the esprit de corps
11 of the Marine Corps. And he's not a suitable candidate for the
12 Marine Corps.

13 He's not a suitable candidate for release in this
14 situation, especially because it does give the impression that
15 he tried to mislead the Probation Officer when reporting facts
16 about his military service to the Probation Officer. Another
17 factor for your consideration. For all these factors, we think
18 that he should be detained, Your Honor.

19 THE COURT: Thank you, Mr. Eason.

20 Ms. Adams?

21 Thank you, Ms. Adams.

22 MS. ADAMS: May I proceed?

23 THE COURT: You may.

24 MS. ADAMS: Thank you. Your Honor, the military
25 records speak for themselves. They state that he was -- they

1 recommended a discharge because he was charged with two
2 felonies and two misdemeanors. That's exactly what it says.

3 But regardless of that, the way he was discharged
4 from the military has nothing to do with whether or not he's
5 going to show up for Court.

6 The purpose of bail or release or the conditions that
7 you may impose are to ensure that he will show up to take his
8 court settings. His --

9 THE COURT: Now, Ms. Adams, talk to me about why I
10 should release your client when he has failed 23 UAs?

11 MS. ADAMS: So, Your Honor, in -- his mother
12 testified regarding that last week. But in addition to that,
13 his failed UAs does not -- is not a factor to determine whether
14 or not he's going to show up to Court.

15 In regards to Exhibit Number 7 from the previous
16 setting, all the court settings are laid out and the motion for
17 the revocation is there as well.

18 What we don't see is him not coming to report. What
19 we don't see is him not showing up to Court.

20 THE COURT: No, we see him failing conditions. So
21 how can I be assured that your client's going to be in
22 compliance with any conditions that I enter?

23 MS. ADAMS: There are several ways. Your Honor,
24 there can be a drug patch used. He can use a SCRAM device.
25 There are several different conditions that can be used.

1 His prior drug use and the last prior drug use was
2 over a year ago per the report. That a year -- that is a long
3 amount -- that is a great amount of time for a person to
4 abstain from using drugs.

5 We don't know if he's currently used drugs, but
6 again, the Court can provide conditions that will ensure that
7 he is not.

8 He can even -- the Court can even give a condition
9 for him to do outpatient treatment. He can go to classes.
10 There are a variety of different things that the Court can
11 impose to ensure that Mr. Dunn will not use drugs and will
12 attend Court.

13 In regards to Exhibit A, the police reports that the
14 Prosecutor provided, in none of those reports does it state
15 that he resisted arrest, that he attempted to flee, that he did
16 not attend Court.

17 The same thing for Exhibit C. He didn't go AWOL from
18 the military once he got in trouble. He didn't stop reporting.

19 The Bail Reform Act, and I am referring to a 5th
20 Circuit case, and if you want the cite, Your Honor, I can
21 provide it, it is U.S. v. Bird.

22 And it states that detention is not authorized when
23 the Government merely wants it. It has to be tied to one of
24 the six circumstances in the Bail Reform Act.

25 Mr. Dunn, there has been no credible or substantial

1 information that he is -- he has been a threat to law
2 enforcement or any other parties.

3 He has -- in those same reports, he didn't try to
4 harm the officers. He didn't try to flee or anything like
5 that.

6 In addition, per the U.S. v. Byrd, a Defendant's
7 threat to safety or other persons or to the community standing
8 alone will not justify pre-trial detention.

9 Mr. Dunn has been in custody for 21 days. And
10 there's now COVID in his jail. And he's experiencing health
11 issues related to his back injury. He has -- he now needs
12 dental services, because he had a injury to her -- to his
13 mouth.

14 And he's currently being held in a facility -- well,
15 they relocated him to another part of the jail, where he's
16 essentially -- they're using tactics by leaving the light on
17 for 24 hours a day for the past three days, so that he can't
18 even properly get rest.

19 Whether or not Mr. Dunn was deployed or not deployed
20 has no standing on whether or not he will show up to Court.

21 What we do know is that he shows up to Court. He
22 showed up to Probation. He doesn't flee. He doesn't resist
23 arrest.

24 He doesn't own any firearms, because they took them.
25 He's not a convicted felon. He's never been convicted of any

1 crime.

2 What we do know is, other than his military service,
3 he's been in the Eastern District for his -- the entirety of
4 his life other than two years and other than his military
5 service.

6 Mr. Dunn, based on his own court records, shows up.
7 There's no failure to appear. There's no --

8 THE COURT: You keep saying that, Ms. Adams, and I
9 understand that you're making the representation that he's
10 going to show up, but that's not the only thing that this Court
11 has to consider.

12 And I am concerned about his failed UAs and the fact
13 that he was living with his parents when he failed those. How
14 am I to be assured that he's not going to go home and use drugs
15 with his parents monitoring him? What have you done to ensure
16 that I should not have that concern?

17 MS. ADAMS: Well, Your Honor, his parents don't use
18 drugs. They -- his mom and his dad, neither have a criminal
19 record.

20 They are willing to let him -- he lives in a separate
21 house, but they are willing to let him live in their house and
22 let Probation come to their house, if that's what's needed to
23 be done.

24 THE COURT: Do you have any further comments, Ms.
25 Adams?

1 MS. ADAMS: No, Your Honor.

2 THE COURT: Mr. Eason, anything further?

3 MR. EASON: He shows up when he doesn't -- but
4 sometimes he doesn't show up. Over 30 missed urinalysis in the
5 Defense own records, again, showing that he can't comply with
6 Supervised Release.

7 THE COURT: All right, the Court's going to take this
8 matter under advisement momentarily. If I can have the
9 Government representative, and counsel, and the remainder of
10 the cases pending before the Court approach, please?

11 MR. EASON: Yes, Your Honor.

12 (Recess at 9:55 a.m., recommencing at 11:11 a.m.)

13 THE COURT: All right, at this time, the Court is
14 going to return to cause number 420CR142, the United States of
15 America v. Daniel Austin Dunn.

16 Mr. Dunn, if you can come forward.

17 If I can also ask for Mr. and Mrs. Dunn to come
18 forward, please.

19 All right, the Court following the conclusion of the
20 prior proceeding and today's proceedings, has determined to
21 release Mr. Dunn, subject to his own -- if you all will just
22 come -- over close to Ms. Adams.

23 The Court has determined to release Mr. Dunn subject
24 to his own personal recognizance and some very extraordinarily
25 strict conditions, as well as an appearance bond of \$50,000.

1 Now we'll just note at the outset of the -- following
2 that statement, it is the Court's understanding that the
3 Government intends and does in fact request to stay the Court's
4 order releasing Mr. Dunn; is that correct?

5 MR. EASON: That is correct at this time, Your Honor.

6 THE COURT: Okay, and the Court is going to grant the
7 request to stay. And so, we are going to discuss the
8 conditions under which I would order Mr. Dunn released.

9 But notwithstanding that, I'm the magistrate judge.
10 And because Mr. Eason has requested a stay, the Government has
11 the right to appeal my decision to the District Court, who will
12 then determine whether or not my decision was correct.

13 So we're going to go ahead and go over these
14 conditions, but I just need to make sure everyone knows that in
15 light of the request for stay, Mr. Dunn is not being released
16 today.

17 All right, so Mr. Dunn, and then as well his parents,
18 if I might ask each of you to please raise your right hand to
19 the best of your ability at this time.

20 (The Defendant, Mr. Rick Dunn, and Ms. Judy Dunn are
21 sworn)

22 THE COURT: Okay, so I'm going to be talking with
23 each of you regarding these orders. And so, we're going to
24 begin with Mr. and Mrs. Dunn, Mr. Dunn's parents.

25 The Court has handed down this proposed order setting

1 conditions of release. Have you had an opportunity to review
2 these conditions?

3 And if you can -- I'm going to need to have you all
4 on record. So if you all can step up to that microphone.

5 MR. R. DUNN: Yes, ma'am.

6 THE COURT: And can you just tell me you have
7 reviewed the conditions, Mr. and Mrs. Dunn, I need both of you
8 to tell me yes.

9 MR. R. DUNN: Yes, ma'am.

10 MS. J. DUNN: Yes.

11 THE COURT: Okay, and you've had an opportunity to
12 talk with your sons' lawyer about each and every one of these
13 conditions?

14 MR. R. DUNN: Yes, ma'am.

15 MS. J. DUNN: Yes, ma'am.

16 THE COURT: Okay, and you understand that what I'm
17 doing is I'm placing your son in your custody?

18 MR. R. DUNN: Yes, ma'am.

19 MS. J. DUNN: Yes, ma'am.

20 THE COURT: Okay, and you understand that as a
21 requirement of him being placed in your custody, you will be
22 required to transport him for any UAs or any other assessments
23 that the Court has ordered?

24 MR. R. DUNN: Yes, ma'am.

25 MS. J. DUNN: Yes, ma'am.

1 THE COURT: All right. And as well, you understand
2 that he is required to live within your residence and is not
3 permitted to travel or traverse the remainder of your property?

4 MR. R. DUNN: Yes, ma'am.

5 MS. J. DUNN: Yes, ma'am.

6 THE COURT: Okay, now there is one thing. I know you
7 were sitting here in Court, and so, you heard I have some very
8 strong concerns regarding your son's past drug use when and at
9 a time that he was in residence with you.

10 And so, I need both of you to assure me at this time
11 having been placed under oath that you fully intend to monitor
12 your son and that if there is any drug usage whatsoever, that
13 you will report it?

14 Mrs. Dunn?

15 MS. J. DUNN: Yes, ma'am.

16 THE COURT: And Mr. Dunn?

17 MR. R. DUNN: Yes, ma'am.

18 THE COURT: Do each of you fully understand what your
19 obligations are as a third-party custodian?

20 Mrs. Dunn?

21 MR. J. DUNN: Yes, ma'am.

22 THE COURT: Mr. Dunn?

23 MS. R. DUNN: Yes, ma'am.

24 THE COURT: So you each understand that it is your
25 obligation, if he is released, to supervise him and ensure that

1 he is in compliance with each and every one of these
2 conditions?

3 Mrs. Dunn?

4 MR. J. DUNN: Yes, ma'am.

5 THE COURT: And Mr. Dunn?

6 MS. R. DUNN: Yes, ma'am.

7 THE COURT: You understand that it is your obligation
8 to ensure that he appears at every court appearance?

9 Mrs. Dunn?

10 MR. J. DUNN: Yes, ma'am.

11 THE COURT: And Mr. Dunn?

12 MS. R. DUNN: Yes, ma'am.

13 THE COURT: And each of you further understand that
14 it is your obligation if he violates even one of these
15 conditions to notify the Court immediately?

16 Mrs. Dunn?

17 MR. J. DUNN: Yes, ma'am.

18 THE COURT: And Mr. Dunn?

19 MS. R. DUNN: Yes, ma'am.

20 THE COURT: And I need each of your assurances, while
21 you were under oath, that you feel competent and capable of
22 reporting him should he violate.

23 Mrs. Dunn, I understand he is your son. Are you sure
24 that you are able to report him if he violates?

25 MR. J. DUNN: Yes, ma'am.

1 THE COURT: And Mr. Dunn?

2 MS. R. DUNN: Yes, ma'am.

3 THE COURT: All right, at this time, I do find having
4 spoken with each of you that you do qualify as appropriate
5 third-party custodians and you may be seated.

6 All right, Mr. Dunn, if you'll step forward. You're
7 under oath. You understand this is your signature?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right, do you understand that I am
10 going to order you released subject to certain conditions?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right, I've also ordered an
13 appearance bond. Is this your signature on the appearance
14 bond?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: So you understand there's a \$50,000
17 unsecured appearance bond in connection with your case as well?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right, do you first off understand
20 that the Government's requested a stay, so you're not being
21 released at this time.

22 You're going to go back into the custody of the
23 Marshal Service and you will be there until such time as the
24 Government has an opportunity to appeal my decision to the
25 District Court?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right, notwithstanding that, you have
3 gone over each and every one of these conditions and you
4 understand each and every one of them?

5 THE DEFENDANT: Yes, Your Honor, I do.

6 THE COURT: And if you were to be ordered released,
7 you would be in compliance with each of these conditions?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right, we've had a lot of discussion
10 here today about your past failure to honor conditions that
11 were entered by the Court.

12 And so, I need to know while you're here under oath
13 that you are promising me that you are going to be in
14 compliance with each and every one of these conditions?

15 THE DEFENDANT: Yes, Your Honor, I promise.

16 THE COURT: And do you further understand that if you
17 have even one violation, this is not state court, if you
18 violate, if you have one dirty UA, you are going back into
19 custody.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you fully understand that?

22 THE DEFENDANT: Yes, Your Honor, I do.

23 THE COURT: And have you and Ms. Adams discussed that
24 it will negatively impact your case if you are revoked off of
25 your conditions?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Now the law does require that I admonish
3 you as well regarding other consequences should you fail to
4 comply. So I'll do that at this time.

5 Do you understand that failing to appear in court is
6 required as a crime for which you may be sentenced to
7 imprisonment?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand if you violate any
10 condition of release, a warrant for your arrest may be issued,
11 and you may be jailed until trial and prosecuted for contempt
12 of court?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand that committing a crime
15 while you are on release may lead to more severe punishment
16 than you would otherwise receive for committing the same crime
17 at any other time?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And do you further understand it is a
20 crime to try to influence, threaten, attempt to bribe, or
21 retaliate against any juror, witness, or other person who may
22 have information about your case or otherwise obstruct the
23 administration of justice?

24 THE DEFENDANT: Yes, Your Honor, I do.

25 THE COURT: So you fully understand what could happen

1 to you if you do not comply with these conditions?

2 THE DEFENDANT: Yes, Your Honor, I do.

3 THE COURT: All right, at this time, the Court will
4 sign this proposed order setting conditions of release. And I
5 will hereby order it docketed.

6 Notwithstanding that, I further order execution of
7 this order to be stayed pending the Government's appeal of this
8 decision to the District Court.

9 Is there anything further from the Government at this
10 time?

11 MR. EASON: No, Your Honor.

12 THE COURT: Is there anything further, Ms. Adams?

13 MS. ADAMS: Yes, Your Honor. I -- my question is in
14 regards two things. One, Mr. Dunn does own a separate
15 business, that we did talk about at that initial hearing on
16 June 18th, that he runs online. To make things clear, is it
17 okay that the business is still run, not by him, but by his
18 family?

19 THE COURT: If what I'm hearing -- I think what I'm
20 hearing you ask is that he's going to be doing the
21 leatherworking. And to the extent there's anything online that
22 needs to be done, that it would be his family who would
23 continue?

24 THE DEFENDANT: Yes.

25 THE COURT: Let me ask Mr. Eason, obviously, I

1 understand that you object to the Court releasing Mr. Dunn in
2 any form or fashion, but if his business were to be operated in
3 that manner, does the Government have any objection to him
4 continuing his leatherworking activities in his parents'
5 residence?

6 MR. EASON: I don't -- I can't think of a condition
7 that prevents him from working with leather in the residence.

8 THE COURT: I do not either. So long as he is only
9 using the leatherworking and anything Internet or otherwise is
10 relegated to his parents, I don't see that that would be in
11 violation of his conditions.

12 Again, he's restricted to the residence. Nowhere
13 else on the property. I understand that this is a ranch.
14 Nowhere else, no out buildings no other. Restricted to the
15 residence. And that's if my conditions are upheld by the
16 District Court.

17 Anything further, Mr. Eason?

18 MR. EASON: Not at this time, Your Honor.

19 THE COURT: All right, Ms. Adams?

20 MS. ADAMS: Yes, also Your Honor, in regards to your
21 stay, I understand that you've already granted it, but I need
22 to put --

23 THE COURT: Okay, go ahead.

24 MS. ADAMS: I'm going to ask that you deny the stay
25 and let Mr. Dunn be released. If the district judge would like

1 to not uphold your ruling, we all know where Mr. Dunn will be
2 and he can be quickly and easily taken into custody.

3 THE COURT: And certainly I hear your argument, but
4 I'm going to grant the stay. And he'll remain in custody until
5 such time as the Government has an opportunity to file the
6 stay, which I assume they'll file it today. And then, the
7 District Court will set that or proceed however the District
8 Court decides to.

9 Okay, thank you, everyone. We will be adjourned.

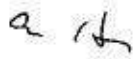
10 MR. EASON: Thank you, Your Honor.

11 (Proceedings concluded at 11:19 a.m.)
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CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



Chris Hwang
Transcriber

July 6, 2020

Date